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VIA ECFS

September 23, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: *Ex Parte* Notice - Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch:

On September 22, 2011, Tom McCabe and Norman Kennard representing TDS Telecom (TDS), Colin Sandy, Bob Gnapp, and Mark Novy of the National Exchange Carrier Association (NECA), Jill Canfield of the National Telecommunications Cooperative Association (NTCA), Steve Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the undersigned counsel on behalf of twenty-eight members of the Missouri Small Telephone Company Group (MoSTCG), met with Albert Lewis, John Hunter, Randy Clarke, Victoria Goldberg and Rebekah Goodheart of the Wireline Competition Bureau (WCB), Margaret Dailey and Terry Cavanaugh of the Enforcement Bureau, and Peter Trachtenberg of the Wireless Telecommunications Bureau of the Federal Communications Commission (FCC or Commission). Mr. Gnapp and Mr. Novy participated in the meeting via telephone.

The participants discussed the attached presentation regarding Halo Wireless, Inc. (Halo). Specifically, the representatives of TDS discussed TDS's experience in seeking compensation from Halo for the termination of traffic. The representatives of NECA presented a summary of the significant volumes of Halo traffic being terminated to NECA members. The participants also explained that the "re-origination" of a call over a wireless link in the middle of the call path does not alter the jurisdiction of the call or convert a wireline-originated call into a wireless call.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions or require additional information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Whiteaker', with a long horizontal flourish extending to the right.

Gregory W. Whiteaker

Attachment

cc: (via email)

Albert Lewis
John Hunter
Randy Clarke
Victoria Goldberg
Rebekah Goodheart
Margaret Dailey
Terry Cavanaugh
Peter Trachtenberg

Halo/Transcom Access Arbitrage

Presentation to FCC
September 22, 2011

Participants

TDS Telecom

Missouri Rural ILECs

NECA

OPASTCO

NTCA

Summary

- Halo is sending a combination of wireline and wireless-originated access traffic and attempting to disguise it as intra-MTA wireless-originated traffic to get free termination service;
- Transcom is aggregating toll traffic and delivering the traffic to its affiliate Halo Wireless in order to fraudulently avoid paying access charges.
- TDS has used the originating and terminating end-points of the calls to establish 78% is wireline interexchange , 10% is non-Halo wireless inter-MTA; and 12% non-Halo wireless local or intraMTA CMRS.
- Halo Wireless has filed bankruptcy and the owner Scott Birdwell has created a new company Halo Wireless Services Inc. to interconnect in Verizon Markets.

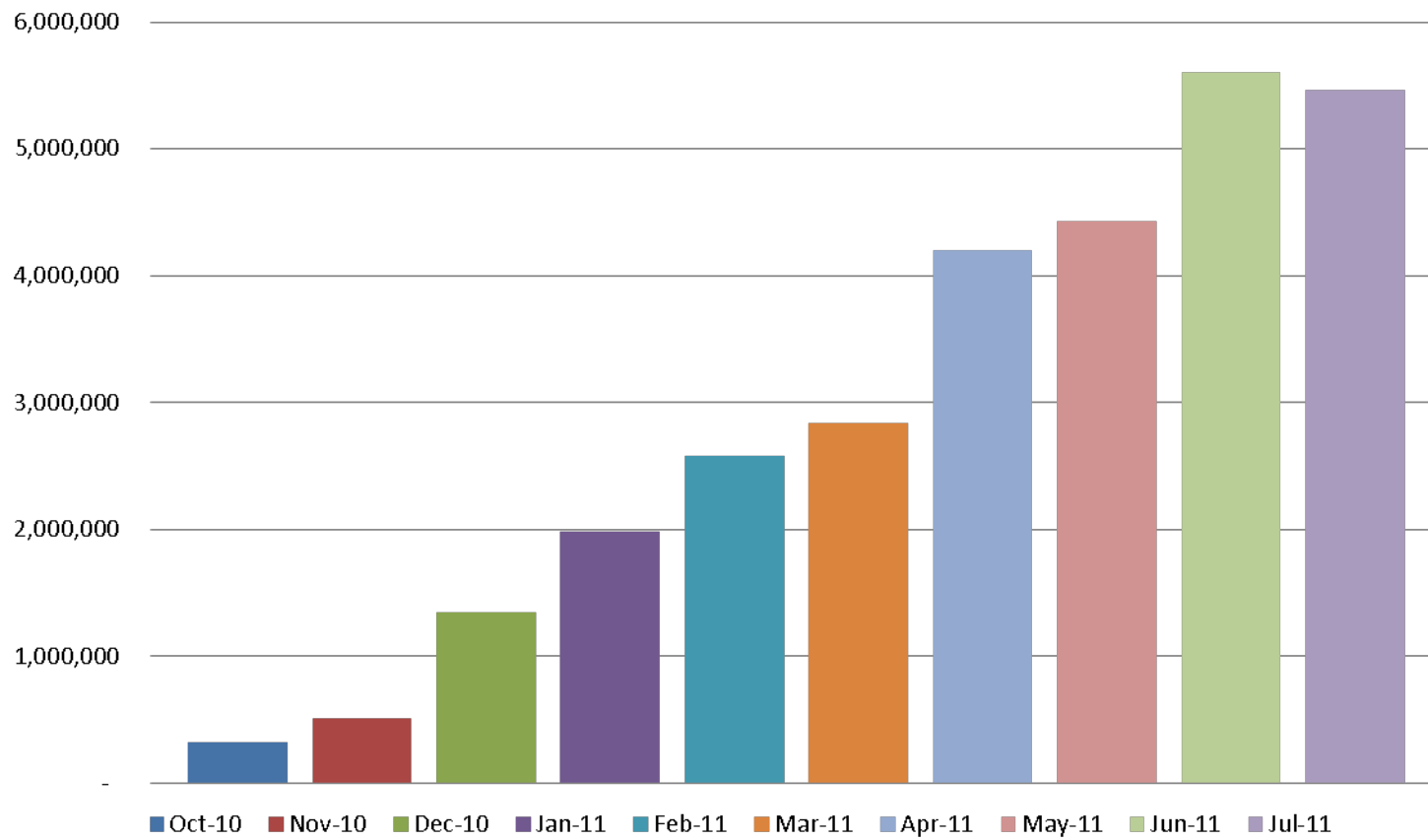
FCC Should Address Access Arbitrage

- FCC should confirm that “technology-in-the-middle” does not alter jurisdiction or nature of traffic
 - Confirm legal obligation to pay interstate access, consistent with “IP-in-the-middle” precedent
 - Reaffirm state authority to address disputes over intrastate traffic, regardless of technology in the middle.
- FCC should confirm that “re-origination” of traffic does not alter jurisdiction or nature of traffic
 - Reaffirm “end-to-end” analysis, even if “CMRS-in-the-middle”.
- FCC should require all providers to accurately populate and pass call originating information for all traffic originating or terminating on the PSTN (enforcement mechanisms necessary)
 - Include originating carrier information also to allow accurate identification of responsible parties.
- FCC should confirm that carriers may cease accepting and terminating traffic delivered through access avoidance schemes.

TDS Telecom – Halo Wireless/Transcom Enhanced Services (Transcom) Complaint

- TDS has complaints pending in GA and TN against Halo Wireless and Transcom, and is participating in a complaint in MO against Halo Wireless.
- 2009-2010 – Halo Wireless began opting into interconnection agreements between AT&T and other CMRS Providers.
- October 2010 – TDS began receiving minutes from Halo Wireless for termination. The total number of minutes in October 2010 was approximately 327,000. By August 2011 TDS terminated over 5,000,000 minutes.

Halo Wireless Minutes Terminated by TDS Telecom



TDS Telecom – Halo Wireless/Transcom Enhance Services Inc. (Transcom) Timeline

- April 2011- Based on a review of SS7 data TDS issued access invoices to Halo Wireless.
- Halo has disputed these access bills alleging that Halo is a Commercial Mobile Radio Service (CMRS) provider, and claiming that all the traffic delivered to TDS for termination is intraMTA CMRS traffic which is not subject to access charges.
- August 2011 – Through August 2011 access charges owed by Halo Wireless is in excess of \$800,000 and grows by \$150,000 per month.

TDS Telecom – Halo Wireless/Transcom Timeline

- April 2011 – Halo Wireless Services Inc. was incorporated and has entered into or seeking interconnection agreements in Verizon markets.
- August 8, 2011 – Halo Wireless filed for voluntary bankruptcy, owing millions of dollars to RLECs and AT&T.

Bankruptcy

- TDS, like all RLECs, has lost millions of dollars in access revenues because of access arbitrage.
- Companies such as Global NAPs, CommPartners and now Halo Wireless create regulatory and legal loop holes that do not exist in order to exploit lengthy and costly regulatory delays while continuing to use the networks of RLECs free of charge.
- Transcom has benefited greatly from these schemes as they have used these carriers to terminate millions of minutes without payment of access charges.
- The loss of these revenues ultimately impacts deployment of broadband services to rural America.

Halo Wireless Service

- Halo Wireless' Ex Parte Alleges to Provide Two (2) Services; (1) Broadband Wireless Mobile Voice and Data Services to Retail Consumers and (2) Common Carrier Wireless Exchange Service to ESPs and Enterprise Customers
- Halo Wireless' Retail Voice Service offering is similar to that of Magic Jack in that it requires a broadband connection and a laptop computer.



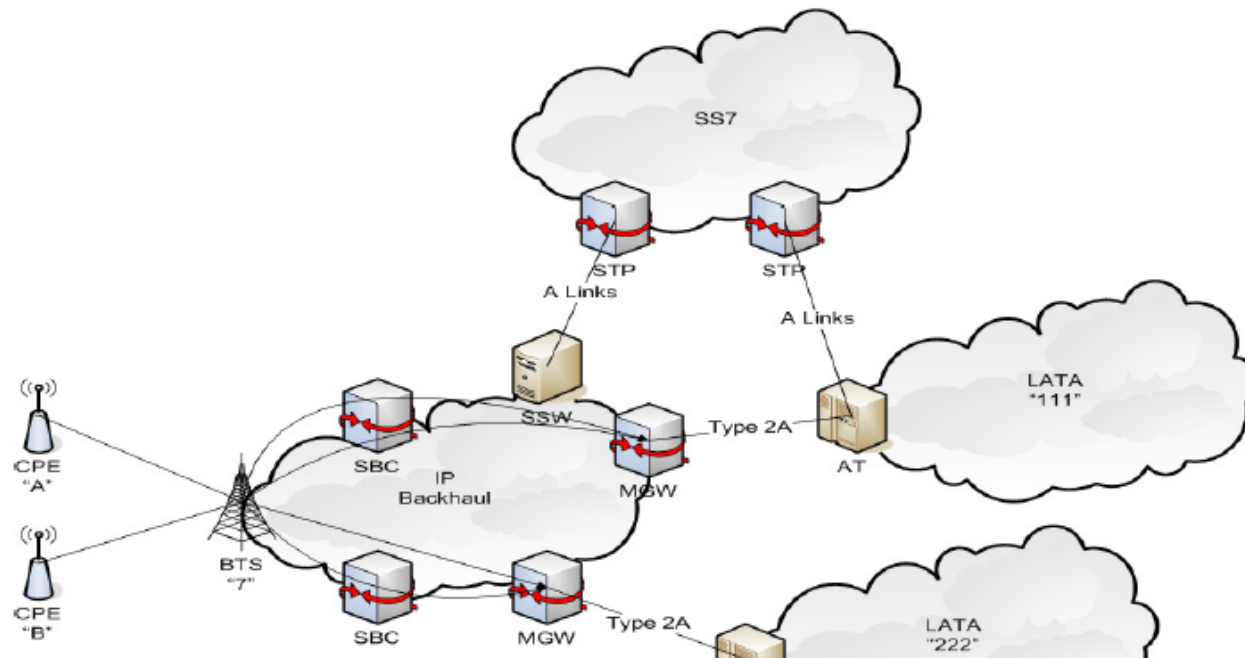
Halo Wireless Service

- Halo's primary business is the "High Volume" Customer offering, delivering third-party traffic to the tandem for termination to the local exchange carriers' end user.
- Halo Wireless' "High Volume" Customer offering allows its affiliate company Transcom Enhanced Services, Inc. to terminate traffic, principally toll, aggregated from IXCs, Cable Providers, CLEC and Wireless Providers.
- Transcom is the only "High Volume" Customer served by Halo.

How is Transcom Enhanced Service, Inc. Involved in Access Arbitrage?

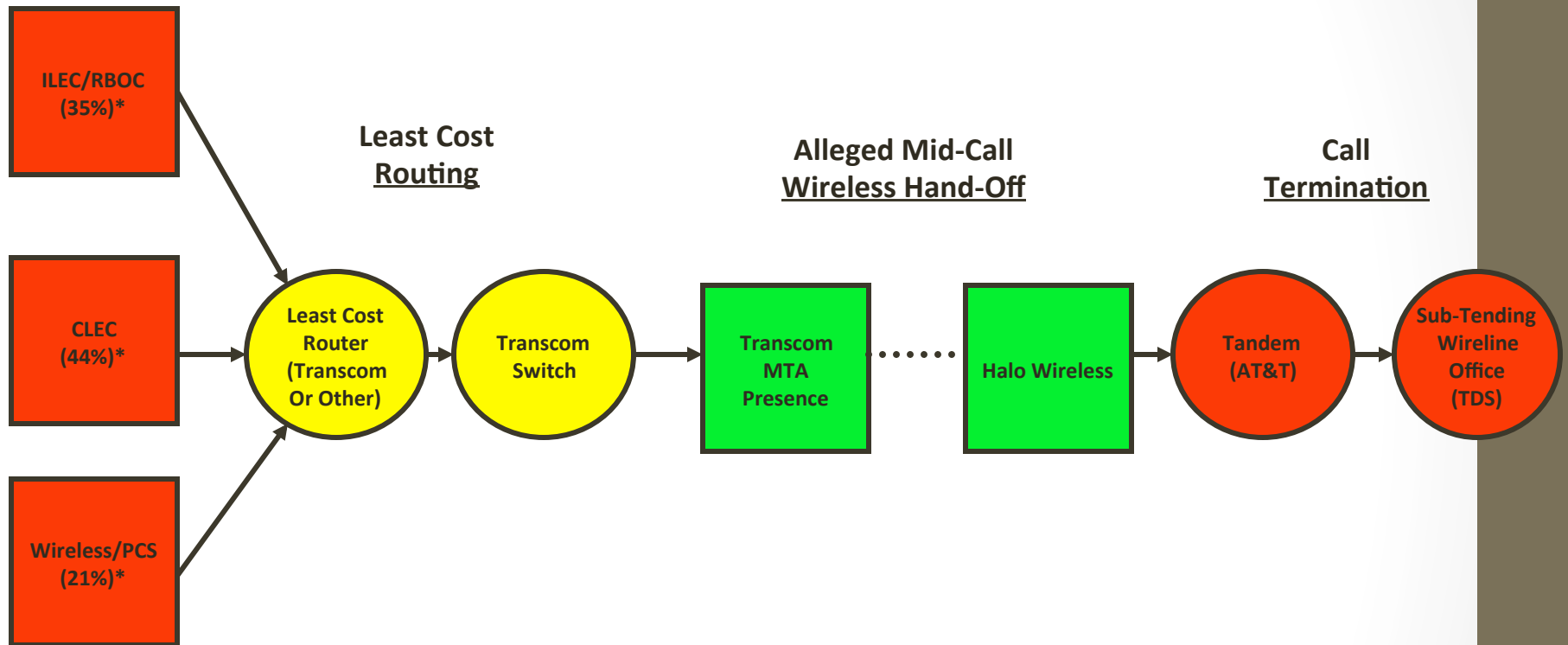
- According to Transcom's website, its core service offering is “voice termination service” for which it boasts a current run rate of nearly one billion minutes per month.
- Despite the importance of local termination to its business, it does not appear that Transcom directly interconnects with a tandem provider, but instead it uses a third-party provider to deliver traffic to the tandem operator.
- The CEO and President of Transcom and Halo Wireless were the same individual. (Only recently has Halo Wireless identified a new CEO.)

Halo Wireless's core network is all IP from customer wireless access points up through the IP-TDM conversion for ILEC traffic exchange.*



Actual Halo Call Flow Diagram

Call Origination



*All Halo-delivered traffic is third-party originated. 88% of traffic is interexchange or interMTA, based upon originating and terminating points, to which access applies. The amount in the parenthesis is the percentage of access rated traffic originated by each carrier segment (ILEC/RBOC, CLEC/Cable and Wireless/PCS).

Halo claims all traffic is IntraMTA CMRS

- Composite results of analysis performed on over 2.5 Million minutes terminated by TDS companies for Halo.
- Majority (78%) of traffic was originated by non-CMRS wireline CLEC, ILEC, and cable companies.
- Less than 12% was either wireline local or IntraMTA CMRS.
- 88% of the traffic is subject to interstate and intrastate access charges.
- No traffic was originated by an end-user customer of Halo.

Halo FCC Meeting August 10, 2011

- Halo's claim that all traffic traversing interconnection arrangements originate from customer wireless link base stations in the same MTA is simply false and misleading.

Halo FCC Meeting August 10, 2011

Orig Company	Orig CXR Type	Orig LATA	Term OCN	Term CXR Type	Term Company	Term LATA	TGSN OCN	Connect Date	Orig Telephone	Term Telephone	MOU
SPRINT SPECTRUM LP	PCS	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/9/2011	706 627-XXXX	706 632-XXXX	0.1
NEW CINGULAR WRL GA	WIRELESS	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/5/2011	706 631-XXXX	706 632-XXXX	0.3
VERIZON WIRELESS-GA	WIRELESS	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/15/2011	706 699-XXXX	706 838-XXXX	0.1
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/30/2011	706 721-XXXX	706 258-XXXX	1.2
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/27/2011	706 722-XXXX	706 258-XXXX	1.5
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/27/2011	706 722-XXXX	706 632-XXXX	1.7
KNOLOGY OF GEORGIA, INC.	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/3/2011	706 729-XXXX	706 374-XXXX	24
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/25/2011	706 733-XXXX	706 258-XXXX	0.4
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/20/2011	706 733-XXXX	706 632-XXXX	2.3
COMCAST PHONE OF GEORGIA, LLC - GA	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/14/2011	706 733-XXXX	706 632-XXXX	2.3
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/10/2011	706 736-XXXX	706 374-XXXX	21.7
DELTACOM, INC. - GA	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/26/2011	706 736-XXXX	706 632-XXXX	1.9
KNOLOGY OF GEORGIA, INC.	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/5/2011	706 737-XXXX	706 374-XXXX	9.1
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/31/2011	706 737-XXXX	706 632-XXXX	0.1
BELLSOUTH SO BELL	RBOC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/28/2011	706 737-XXXX	706 632-XXXX	0.4
KNOLOGY OF GEORGIA, INC.	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/5/2011	706 738-XXXX	706 374-XXXX	7
KNOLOGY OF GEORGIA, INC.	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/31/2011	706 738-XXXX	706 374-XXXX	0.1
COMCAST PHONE OF GEORGIA, LLC - GA	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/28/2011	706 738-XXXX	706 632-XXXX	2.5
LEVEL 3 COMMUNICATIONS, LLC - SC	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/7/2011	706 738-XXXX	706 632-XXXX	0.2
BANDWIDTH.COM - GA	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/29/2011	706 751-XXXX	706 632-XXXX	3.4
BANDWIDTH.COM - GA	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/29/2011	706 751-XXXX	706 632-XXXX	0.4
BANDWIDTH.COM - GA	CLEC	442	346	ILEC	BLUE RIDGE TEL CO	438	429F	5/9/2011	706 751-XXXX	706 632-XXXX	0.5

81.2

Halo FCC Meeting August 10, 2011

- Halo claimed that only traffic destined to telephone exchange in the same MTA in which the tower resides is accepted for termination over this link; all other traffic is routed to an IXC for handling, and exchange access charges are paid is simply false and misleading.

InterMTA CMRS Traffic

Delivered via Local Interconnection

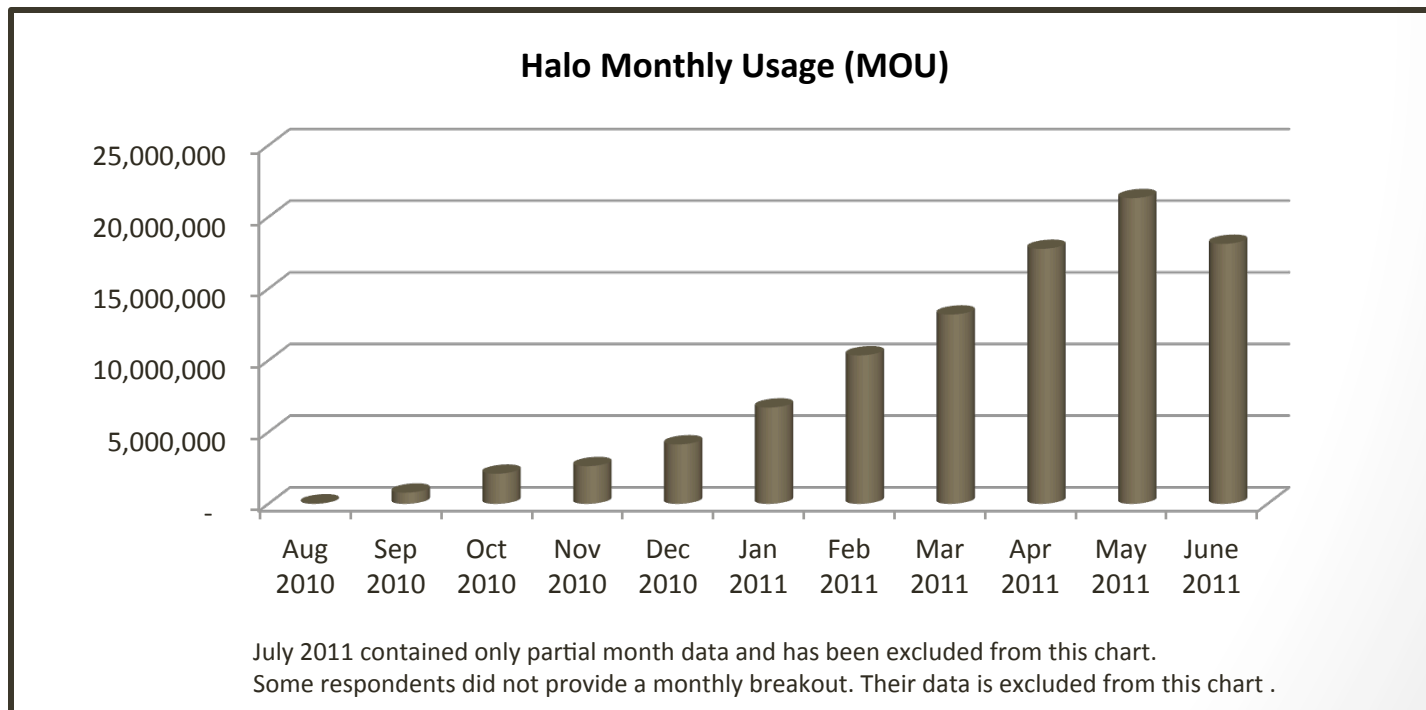
not via IXC as Halo claims

Orig Telephone	Orig MTA	Term Telephone	Term MTA	MOU	PortPS OCN	PortPS OCN Name
229 232-XXXX	37	706 632-XXXX	11	37.2	6232	NEXTEL COMMUNICATIONS, INC.
229 379-XXXX	37	706 374-XXXX	11	18.4	6298	ALLIED WIRELESS COMMUNICATIONS LLC DBA ALLTEL - GA
229 403-XXXX	37	706 632-XXXX	11	32.3	6298	ALLIED WIRELESS COMMUNICATIONS LLC DBA ALLTEL - GA
229 561-XXXX	37	706 258-XXXX	11	7.7	6540	CELLCO PARTNERSHIP DBA VERIZON WIRELESS - GA
229 563-XXXX	37	706 374-XXXX	11	28.7	6540	CELLCO PARTNERSHIP DBA VERIZON WIRELESS - GA
229 630-XXXX	37	706 374-XXXX	11	9.4	6214	NEW CINGULAR WIRELESS PCS, LLC - GA
850 621-XXXX	17	706 632-XXXX	11	5.3	6214	NEW CINGULAR WIRELESS PCS, LLC - GA
305 951-XXXX	15	706 374-XXXX	11	41.8	6214	NEW CINGULAR WIRELESS PCS, LLC - GA
817 798-XXXX	7	706 632-XXXX	11	8.3	6534	NEW CINGULAR WIRELESS PCS, LLC - IL

NECA Study

CMRS Dispute Data Collection

- Issued to NECA Pool participants In July 2011
 - 169 respondents
 - Several NECA pool members declined to respond to this survey citing current litigation with Halo Wireless
 - 118 million terminating MOU attributed to Halo



Legal Issues

HALO' S SERVICE IS NOT PRESUMPTIVELY CMRS

- The Commission licenses 3650-3700 MHz service on a free, non-exclusive basis. Licensees may choose to provide private or common carrier radio services. 47 CFR § 90.1309.
- In adopting this rule, the Commission stated that the type of service actually provided will determine the regulatory classification and obligations of the licensee. *In the Matter of Wireless Operations in the 3650-3700 MHz Band* (2005).
- Halo may, in fact, use its 3650-3700 MHz license to provide CMRS service or not. The nature of the service actually provided by Halo, rather than Halo' s characterization of that service, determine whether or not it qualifies as CMRS.

CALLING JURISDICTION IS DETERMINED BY ORIGINATION/ TERMINATION POINTS

- The foundation of call rating and billing is the Commission's post-divestiture principle that the origin and destination points of a call, as measured by the telephone number locations, determine whether the call is interstate or intrastate for purposes of assessing switched access charges. *MCI Telecommunications* (1985). TDS' interstate and intrastate tariffs references the same language.
- This same methodology applies to wireless-originated traffic. The Commission directed, in 1996, that this same methodology (end to end based upon the calling and called number) would be used for wireless traffic and it explained that the *initial* cell site or perhaps the mobile switching center could be used to determine the location a wireless call's origination. *First Local Competition Order* (1996).
- These routing and billing rules have been affirmed numerous times and have not been changed. *Intermodal Number Portability Order; VoIP Porting Decision*; and *Regulation of Prepaid Calling Card Services* (2006).

INTRASTATE ICC INVOLVING WIRELESS IS THE JURISDICTION OF THE STATES

- The Commission has consistently acknowledged that there is a state component of wireless traffic and the states set the intercarrier compensation for such calling, even where CMRS might be involved. *North County Merits Order* 2009.
- The full FCC fully affirmed the Enforcement Bureau Order. *North County Review Order*.
- This ruling was affirmed in its entirety last spring by the District of Columbia Court of Appeals. *MetroPCS California, LLC v. F.C.C.*, 644 F. 2d 410, 413 (D.C. Cir. 2011).

THRIFTY CALL RULING AFFIRMS THESE POINTS

- In a 2004 case, a long distance wholesaler (a carrier's carrier like Halo and Transcom), argued that, since the calls were handed off by the upstream carriers in Georgia, the calls were rated as if the calls were originated in Georgia. *Thrifty Call* (2004).
- The terminating company (like TDS Telecom here) filed suit before the state commission to collect intrastate access charges on intrastate toll calls regardless of whether the call was routed through Georgia or not. The North Carolina Commission determined that “the traffic at issue is intrastate if it originates and terminates in North Carolina or if it ‘enters a customer network’ in North Carolina and terminates in North Carolina.”
- The Commission both affirmed that the state was the proper jurisdiction to bring such a complaint and the North Carolina Commission ruling on the merits, when Thrifty Call brought a subsequent request for declaratory ruling.

TECHNOLOGY IN THE MIDDLE DOES NOT AFFECT THESE RATING AND BILLING PRINCIPALS

- The technology in the middle of a call does not change its nature for billing purposes either.
- The Commission rejected AT&T's declaratory petition, concluding that AT&T's specific service was a telecommunications service since customers obtained only voice transmission with no net protocol conversion and thus subject to terminating access charges. *AT&T IP-in-the-Middle Decision* (2004).

TRANSCOM IS NOT AN ESP

- Transcom and Halo claim that all of the long distance traffic delivered is “enhanced” by Transcom and, therefore, is exempt from terminating access charges.
- The “enhanced” service designation does *not* apply to services that merely “facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service.” *AT&T Calling Card Decision* (2005).
- In Transcom’s case, the enhancement does not, from the end user’s perspective, “alter the fundamental character” of the telephone service - the service remains a “telecommunications service,” regardless of whether the technical definition of an “enhanced” service. *AT&T 900 Dial-It Services* (1989).
- Transcom provides no end user services and the claim to enhance that call is frivolous.

AS A TELECOMMUNICATIONS PROVIDER, ENHANCEMENTS DON' T AFFECT HALO' S OBLIGATIONS

- Even if Transcom were enhancing the traffic, it does not matter as to Halo.
- Under the precedent of the *Time Warner Declaratory Ruling* (2007), the fact that the content may be enhanced upstream by someone else does not change the telecommunication nature of Halo' s delivery.
- As the Commission further ruled in its *Time Warner Declaratory Ruling*, access payments are due regardless of and upstream enhancements (in that case, the originating technology).
- Like the wholesale CLECs, Halo has obtained an interconnection agreement with AT&T (and indirect delivery access to TDS Telecom) on the basis that it is a telecommunications carrier.
- Having gained these rights, it cannot now claim that the traffic is not telecommunications and deny the payment of access charges.

THANK YOU